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DISCUSSION RESPONSE

In Search of a Shared Grammar: Why Law Is (also) like Poetry.

MAREIKE RIEDEL — 23 February, 2015



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A response to the post by Miriam Aziz.

In her insightful and inspiring piece "Law as Ballet: A Global Pas de Deux" Miriam Aziz invites us to explore the commonalities between law and dance. As "rule based theories of language" they share the quality of being "an organizing structure or grammar which enables and uncovers different interpretations of what lies behind an argument or a choreographic phrase". "We need", Miriam Aziz claims, "to commit to enriching our engagement with the diversity of approaches to international law". I would like to take up the idea of interpretation, translation and perception and give it a further twist by drawing on the already slightly worn but still fruitful comparison of law and poetry.

As early as 1816, English writer William Hazlitt noted that "Poetry, like the law, is a fiction; only a more agreeable one". The Law and Literature movement has spent years exploring this intellectual encounter in various ways and this long interdisciplinary journey has not been without attempts to declare the venture dead. However, I am convinced that we can still learn from this old comparison if we direct our attention to the processes of appropriation, perception and translation. Both law and poetry go through these processes that require sensitivity to context and perspective, a sensitivity that appears to be fundamental if we want to engage in a global conversation on law and a shared understanding of the "grammar of law".

Why Law Is (Not) like Poetry and Poetry (Not) like Law

Law and poetry are universal and particular at the same time. They both address the grand themes of human life and experience: justice, peace, history, love and loss, grief, despair and hope. Law and poetry are matters of language. Both articulate human experience through words. Poetry is an *art* of language. A poem makes language sing and resonate through form, rhythm, rhyme, melody, images, metaphors, repetition. It exploits the full repertoire of what language and its speakers are able to do by means of syntax, morphemes, phonemes and semantics that invoke and evoke worlds of human experience.

Law does something similar, as Weisberg and Baricelli describe in their seminal piece on law and literature. For them, law, and state law in particular, is "a formalized attempt to structure reality through language". But law, unlike poetry, carries the power of normativity and authority. It can even be performative and change the world immediately through language. Think of the judge that pronounces someone guilty or a couple married. Law's tool is language but due to its power it has to weigh its words wisely. No easy task given the arbitrary nature of language.

The Pitfalls of Appropriation and Perception

The arbitrariness of language is essential to literature. A poem is open to interpretation and perception. It gives us a rough guideline with its words, structure, its rhythm and melody, syntax and images. But what we readers find in it ultimately depends a lot on us. We bring to it our past and present experiences, our wishes and feelings. What we feel and what we see in a poem depends to a significant extent on what we wish to see in it and less on what the author wished it to tell us. Each of us reads the same poem and finds something similar and something different in it. Literary scholar Wolfgang Iser described the process of literary perception as a communicative act between the text and its reader that is inscribed into the text – an act that is guided by the structure of the text itself but which plays out through dialogue with the ongoing experiences and expectations of the reader. A poem can even mean something very different to the same person at a different time, though no words have changed, no verse has moved, but the person has changed and moved, as have her/his needs and experiences.

The same goes, to some extent, for law. Legal concepts like the freedom of speech give us a framework but what we make of it, how we understand it, also depends on our local, historical and cultural context. We do not have to travel far in the world to notice the difference: Free speech means one thing for a US American and another for a German who understands this right from the background of a particular historical experience. Legal concepts guide our talk about conflicts between rights. They provide a guideline and direction for our interpretation, deliberation and negotiation. But how we balance the competing rights or how much weight we attribute to each of them is ultimately and heavily influenced by our specific contexts, by the worlds that we inhabit. So free speech is at once the same but it is also very different.

We may well agree that the word in the second verse of a poem is "red" and that "red" means "red". But the connotation this colour carries for a certain reader, whether it triggers a particular emotion or memory, or if it reaches out into the following verses and colours them as well, whether she or he thinks about magenta red, Bordeaux or neon red: Ultimately we cannot impose or prescribe these nuances. Miriam Aziz puts it quite bluntly: "Just as no people walk the same way, nor do they think alike." I would like to add: Nor do they perceive and

interpret alike – and differences grow the more as we leave the boundaries of our national contexts behind. But how do we deal with these differences, these scattered particularities in our search for a common grammar of law?

A Step Forward? Translation and Sensitivity

Is there anything left if interpretation and perception are so subjective? Do I end up presenting a terribly relativist understanding of law with my claim that it is like poetry? That, even if there is a grammar, we can only fail in our search for it? The answer must be no, precisely because law is like poetry in a way. In the same way as poetry, law is an attempt to make sense of the world and of human experience through language. And language is, in a way, a human universal.

Walter Benjamin, writing about the possibility and impossibility of translation, claimed that it is translation that reveals the kinship, the relatedness of all languages. All languages mean and refer to the same things and concepts, but it is only through the diverse polyphony of their existence that we might come closer to the ideal language, Benjamin argued. The claim that there is such a thing as an ideal language is certainly contested. But what is more revealing here is Benjamin's idea of an polyphonic encounter in which we might find something common like a grammar of law, the "perfect line" of the movement of law which we can reach for but yet never really grasp. All our attempts or appropriations will remain translations – and it is our place in the world that will guide and determine the way we translate particular concepts into our local structure and imagination in order to understand them.

Legal anthropologist Sally Engle Merry followed human rights initiatives and programs to the local level and observed the way elements and ideas of human rights were adopted in a local context. The travel of human rights as legal ideas and their transformation from book to action on the ground involved processes of appropriation and translation. Appropriation is the replication of the program for the particular local setting. But the ideas and measures also have to be translated. The process of translation unfolds multidimensionally and involves steps of adaptation to the new structural conditions, the redefinition of target audiences

and the reframing of the legal ideas. The procedure of reframing allows the ideas to become culturally resonant in local contexts. The reframing of international legal concepts establishes a link with the local tradition and embeds them in a particular experience.

This is a technique we can also find in the translation of poetry: in the virtuoso German translation of Charles Bernstein's poem "Solidarity Is The Name We Give To What We Cannot Hold", Tobias Amslinger – with a gentle wink – turns Bernstein's "New York poet in California" into "Berliner Dichter in München" and the "San Francisco Poet in the Lower East Side" into "sächsische Dichterschüler in Köln Ehrenfeld". The idea remains the same, but the translation evokes the local world of experience of the German reader. It's the same for law: The grammar is set by a certain legal idea or concept, like the freedom of speech, but through reframing we partly fill in the meaning with our local knowledge, experiences, expectations and narratives. It was Robert Cover who wrote that "[n]o set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning."

The Grammar of Law in a Global Polyphony of Legal Ideas

I argue that we need to be aware of our own narratives, our own experiences and inscriptions that so profoundly shape our understanding of law and the making of legal doctrine. We need to know from which perspective we speak and from which position we begin in our search for a grammar of law. There is no point which is made from nowhere. It is our sensitivity to context, to local experience and expectations that becomes crucial if we want to enter into a real, engaged global dialogue about law, as Miriam Aziz envisions. In this dialogue we may find our understanding and the parameters of law and of legal concepts continuously transformed, but we too will change. To acknowledge the profoundly particular nature of appropriation and perception in the diversity of human experience allows us to engage in a true dialogue. In this conversation we will discover more commonalities than we expect and we will be able to move closer towards a shared understanding of the grammar of law within the "infinite choices and choreographies of how we perceive law".

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A response to this post by Raphael Schäfer can be found [here](#).

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